

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-5895**

**PETITION OF ELLIS THEODORAKOS**  
(Hearings held July 9 and 23, 2003)

**OPINION OF THE BOARD**  
(Effective date of Opinion, October 3, 2003)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-323(a) and 59-C-1-326(b)(2). The petitioner proposes to construct a new single-family dwelling that requires a 7.51 foot variance as it is within thirty-three (33) feet of the established front building line and an accessory structure (detached garage) that requires a variance 6.10 feet as it is within 3.90 feet of the rear lot line. The required established front building line is 40.51 feet and the required rear lot line setback is ten (10) feet.

The petitioner was represented at the public hearing by Anne Martin, Esquire. Nicholas Damico, Paul Christman, Thomas Heath and Kishore Rao appeared in opposition to the variance request.

The subject property is Parcel 648, located at 7201 Ridgewood Avenue, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 00466078).

Decision of the Board: Requested variance for the new single-family dwelling **denied**.  
Requested variance for the accessory structure (detached garage) **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes to construct a new single-family dwelling and an accessory structure/detached garage.
2. Ms. Martin stated that the property is a corner lot located at the intersection of the Thornapple Street and Ridgewood Avenue and that the variances requested are from the Thornapple Street setback. Ms. Martin stated that the required setback for the R-60 Zone is twenty-five feet and that required established front building line for the single-family dwelling exceeds the requirement by fifteen feet.
3. Ms. Martin stated that the two adjacent lots used in the calculation of the established front building line are significantly larger in size than the

petitioner's property. Ms. Martin stated that the petitioner's property is 8,000 square feet and that the lot is shallower than the two adjacent lots. Ms. Martin stated that the requested variance would be consistent with the setbacks of the homes along Thornapple Street.

4. Ms. Martin stated that the existing garage is located in the setback and that the variance requested for the reconstruction of the garage would not expand the existing footprint. Ms. Martin stated that the proposed construction reduces the footprint of the existing structure.
5. The petitioner testified that the established building line requirement adversely impacts the use of his property and that the variance would permit the preservation of a significant number of existing trees on the property.
6. The petitioner testified that the new dwelling would have a hip roof to minimize the view of structure for the adjoining and neighboring properties and that the proposed construction would be in character with the other homes in the neighborhood
7. Mr. Damico testified that he is opposed to the variance request because that he thought that the existing structure would be replaced with a similar structure, only taller.
8. Mr. Christman testified that he submitted into the record a letter of opposition signed by nine other neighbors and that he is opposed to the variance request because it could set a precedent for new construction in the neighborhood. Mr. Christman further testified that he does not believe that the variance request meets the requirements for a variance.
9. Mr. Rao testified that he is opposed to the variance request because the proposed construction would extend into the setback and may create traffic and safety issues.

### **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance for the new single-family dwelling must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioner's property has not exceptional topographical or other conditions peculiar to the property that are not shared with the adjoining and neighboring properties. The Board finds that the petitioner's lot exceeds the minimum lot size for the zone and

that it is similar in size and shape to other lots in the immediate neighborhood. See, Exhibit No. 12 (zoning vicinity map).

Accordingly, the requested variance of 7.51 feet as it is within thirty-three (33) feet of the established front building line for the construction of a new single-family dwelling is **denied**,

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance for the accessory structure/detached garage can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The existing garage is located in the setback. The proposed construction would reduce the size of the original garage and would be located at the same place. The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the regulations would result in practical difficulties for the petitioner if the variance were to be denied.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the construction of an accessory structure/detached garage is the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the view of the structure from the neighboring and adjoining properties would not materially change and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 6.10 feet from the required ten (10) foot rear lot line setback from the construction of an accessory structure is **granted**, subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witnesses and the representations of his attorney, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and 4(b) and 6(a) through 6(i).

The Board adopted the following Resolution:

Be it resolved by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board Chairman Donald H. Spence, Jr. was necessarily absent and did not participate in this Resolution. On a motion by Allison Ishihara Fultz, seconded by Angelo M. Caputo, with Louise L. Mayer and Donna L. Barron, Vice Chairman, in agreement, the Board adopted the foregoing Resolution.

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Donna L. Barron  
Vice Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 3rd day of October, 2003.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the

proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.